

# HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

## Minutes of the Board of Trustees

Tuesday, August 6, 2002

### TRUSTEES PRESENT

Mr. Sam Callejo, Chairperson

Ms. Audrey Hidano, Vice-Chairperson

Ms. Joan Lewis

Mr. Gerald Machida

Ms. Kathryn Matayoshi (Left 11:10 a.m.)

Mr. Neal Miyahira (Left 9:45 a.m.; Returned 1:25 p.m.)

Mr. Willard Miyake (Arrived 10:45 a.m.)

Mr. Clifford T. Uwaine (Arrived 10 a.m.)

Mr. Davis Yogi

### TRUSTEE ABSENT

Mr. James Williams, Secretary-Treasurer

### ATTORNEY

Mr. Brian Aburano, Deputy Attorney General

### HEUHBTF STAFF

Mr. H. Mark Fukuhara, Administrator

Mr. Tracy Ban

Ms. Lynette Fukunaga

Ms. Shirley Kawamoto

Ms. Gerti Reagan, Consultant

Mr. Andy Keowen, Consultant

Mr. Gary Sanehira

Ms. Karen Tom

### OTHERS PRESENT

Ms. Jean Aoki, HSRTA

Ms. Alana Deppe-Mariota, Kaiser

Ms. Monica Engle, VSP

Mr. Charles Khim

Ms. Ruth Kim, Retiree - HSRTA

Mr. Norbert Mendes, HDS

Mr. Maurice Morita, HSTA

Ms. Sarah Moriyama, ORTA

Mr. Michael Moss, HMSA

Mr. Gordon Murakami, Royal State

Ms. Karen Muronaka, HSTA-Retired

Mr. Rod Tam, HMSA

Mr. George Yamamoto, HGEA-Retirees

### I. CALL TO ORDER

The regular meeting of the Board of Trustees was called to order when there was a quorum at 10:45 a.m. by Trustee Sam Callejo, Chairperson, in Conference Room 405, Leiopapa A Kamehameha Building, 235 South Beretania Street, Honolulu, Hawaii, on Tuesday, August 6, 2002.

### ANNOUNCEMENTS

Trustee Miyake apologized to the Board for being late and he did not realize that Trustee Uwaine would defer meeting until his arrival. The Chair noted that Trustee Williams was out-of-state and Trustee Miyahira was called from the meeting and would return later.

### II. APPROVAL OF MINUTES

MOTION was made to approve the minutes of July 9, 2002 as submitted. (Matayoshi/Yogi)  
The motion was passed unanimously. (Employer trustees-4; Employee-Beneficiary trustees-4)

III. COMMITTEE REPORTS

A. ADMINISTRATIVE COMMITTEE

1. Decision making on third party administrator vs. in-house administration.  
Trustee Matayoshi reported that in response to the request for information (RFI), eleven companies were interested in making a presentation to the Board and one company was interested in a conference call. The Committee will review the responses to the RFI at its next Committee meeting on Thursday, August 8, 2002, and will make a recommendation to the Board.
2. Gartner Group Recommendations – Evaluation of the HFIMS.  
Trustee Matayoshi reported that Mr. Fukuhara would report on this item during his report to the Board.
3. Development of Budget and Legislation.  
Trustee Matayoshi reported that Mr. Fukuhara would report on this item during his report to the Board.

B. RULES COMMITTEE

Trustee Yogi reported that the comments received in response from the consultation on the proposed rules were generally not substantive except those received from Garner Consulting. The Committee will review these comments at its next meeting on August 15, 2002, 9 a.m., in the DBEDT Conference Room 436.

C. BENEFITS COMMITTEE

Agenda items C.1., Structural Plan Decisions; C.2., Request for Proposals; and C.3., Benefit Plan Design, were combined in the Committee's report.

Trustee Lewis proposed that two meetings be added to the Board's meeting schedule, October 17 and 24 (convene at 1:30 p.m.), in order to approve the committee's recommendation on health and other benefits plan finalists considered for review by the Board. The October 17 meeting would include the approval of the Committee recommendations on vision, dental, and life insurance plan finalists, and the October 24 meeting would include the approval of the recommendations for medical and prescription drug plan finalists. The Committee will meet on the mornings of October 17 and 24 to finalize the recommendations and Trustee Lewis asked that all Trustees attend.

Trustee Lewis requested Board action on the following Committee recommendations for inclusion in the Request for Proposals (see handout):

- 1) An optional two-year extension of the health benefits contracts with the premiums to be negotiated annually based upon an established formula.
- 2) Use of a composite rate to pay carriers.

- 3) Enrollment of non-responsive participants into default plans. (It was decided that this item would be deferred until the benefit plans to be offered are finalized.)

#### PUBLIC COMMENT

C. Khim commented that with the proposed two-year extension, the employees are at a disadvantage because at the time of collective bargaining negotiations, the cost of the extension's second year is not firm. The difference between the employer's contribution and the actual cost of the plan along with the plan's administrative fee will be borne by the employees.

Garner Consulting commented that the pre-determined formula used for the annual re-negotiation of premiums for the two-year extension would balance the fixed costs with the unknown costs (the cost of claims). The Trust Fund would have the carriers commit to a percentage for the expenses and administration portion and the Trust Fund would place a cap on the "trend" portion of the formula.

The trustees discussed the impact of an annual re-negotiation of premiums for the health benefits plans' second extension year. Trustee Yogi commented that the benefits issue is not an arbitrable matter and it could be dealt with it at the legislature for those units that are unable to strike. For other units, it is possible to enter into supplemental agreements which includes cost items.

#### PUBLIC COMMENT

C. Khim commented that a two-year extension is best for the Trust Fund because it is administratively the easiest. The best for the employee is simply a two-year contract.

The trustees discussed the details and the rationale behind the two-year extension recommendation. It would be possible that the Trust Fund would go out with a new RFP in two years after gaining some claims experience during the first two years of the contract.

C. Khim commented that it was his understanding that the extension was at the Trust Fund's option which does not provide a financial advantage as the Trust Fund may not get a lower cost from carriers because there is no guarantee that the contracts will be extended for another two years.

The trustees commented that these public comments were not given at the Committee meetings. Chair Callejo stated that the such comments should have been given and discussed at the Committee level and noted that the presentation today is limited to the Committee's report of its recommendations to the Board.

PUBLIC COMMENT

C. Khim commented that he is reiterating what was said at the Committee meeting and that the Committee is not presenting a full report to the Board.

Chair Callejo stated that Trustee Lewis would be allowed to give her report, and that public comment would be taken after that report and before action is taken by the Board on the Committee's recommendations. Trustee Lewis proposed that after her report she would make a motion for the Board to adopt the Committee's recommendations as a package less any "set asides" that could be dealt with separately.

Trustee Uwaine commented that the Board's Operating Rules allow for public comment after each item. Chair Callejo reiterated that public comment would be taken after the Committee's report and before action is taken.

PUBLIC COMMENT

C. Khim commented that Robert's Rules is clear that any rule established by the body that is contrary to Robert's Rules shall supersede Robert's Rules.

Trustee Lewis continued the Committee's report on the recommendations to be included in the RFP:

- 4) The medical plan designs to be costed for retirees and actives were described. They include the current PEHF plans, some PPO plans and some HMO plans.
- 5) The recommended medical coverages and exclusions in the plans are the current industry standards. A request for a chiropractic plan is included since one employee organization currently provides this coverage.
- 6) The prescription drug plan designs include designs for retail (30-day supply) and mail order (90-day supply) and contain certain prescription drug exclusions.
- 7) The minimum requirements to bid were outlined.
- 8) The proposed timeline for the RFP process and the awarding of the final contracts were outlined. All trustees were encouraged to attend the Benefits Committee meetings at which the RFP proposers would be making their presentations.

Trustee Lewis reported that after reconsideration of the rate structure, the Committee still recommends a two-tier rate structure because the two-tier rate has the least negative impact for the majority of the employee-beneficiaries. With the two-tier structure, there will be no change or a decrease in the employee contributions for the majority of the employees.

RECESS: 11:59 a.m. to 12:07 p.m.

Trustee Miyake discussed his concern that PPO plan design #4 should be limited to being a working spouse plan to prevent employees from selecting this plan as their primary coverage and to avoid having the employer using this plan as the base plan for collective bargaining negotiations. The trustees discussed that the numerous plan designs being proposed for inclusion in the RFP were to obtain cost bids and were not necessarily the final plan designs that would be offered by the Trust Fund. Trustee Miyake recommended that based on the final costs, coverages could be changed when developing the final plan designs.

#### PUBLIC COMMENT

M. Moss, HMSA, stated that the change in PPO plan design #4 from a catastrophic plan to a working spouse plan would affect the cost of the plan.

The trustees discussed how lifetime maximums are handled when changing between plans with differing maximums and the trends in wellness benefits for future plan models. The trustees discussed Trustee Uwaine's suggestion to send the benefit plan items to employee organizations for comment. There was discussion on the extension of the RFP timeline to accommodate such consultation and the potential impact that such an extension would have on getting the RFP approved and finalized.

#### PUBLIC COMMENT

Mr. C. Khim commented that the RFP timeline is not set in stone and nothing adverse will happen because the timeline was designed to accommodate the employer trustees who indicated that they will be leaving office on December 2. Mr. Khim argued that the deadline to award the contracts could be moved to December 31.

Trustee Callejo commented that the budget for the next fiscal biennium must be submitted by December 1 and that this is a legislative deadline.

MOTION was made for the Board to send out the Benefits Committee Summary (a PowerPoint document that Garner Consulting had prepared to summarize the structural plan decisions for the plan designs that would be included in the RFP) to the same employee organizations that the Board sends proposed rules for consultation and to ask for their comments by August 15, 2002. (Uwaine/no second)

The trustees discussed the deadline that the comments should be submitted and that Garner Consulting should re-work the Benefits Plan Summary to make it more readable and understandable. The trustees also agreed that the information on vision, dental, and life insurance benefits that the Committee will review in its afternoon meeting should also be included in the Benefits Plan Summary.

MOTION was made to send out the Benefits Plan Summary to the exclusive representative organizations and public employers for comments to be received by 12 noon on August 15, 2002. (Uwaine/Machida)

MOTION was amended to extend the deadline to August 19, 12 noon. (Miyake/Uwaine) The motion as amended was unanimously passed. (Employer trustees-4/Employee-Beneficiary trustees-4)

The main motion as amended was unanimously passed. (Employer trustees-4/Employee-Beneficiary trustees-4)

MOTION was made to schedule a Board meeting on August 20, 2002, 1:30 p.m., to consider recommendations based on comments from the consultation and take action on the Benefits Committee's structural plan decisions and other recommendations included in the Benefits Plan Summary. (Lewis/Hidano) The motion was unanimously passed (Employer trustees-4/Employee-Beneficiary trustees-4)

#### IV. OTHER REPORTS

##### A. ADMINISTRATOR

1. EUTF/PEHF Transition Committee. Mr. Fukuhara reported that:
  - a. Staff is working on costs related to recommendations by the Gartner Group. Those costs and timeline will be presented to the Administrative Committee at its next meeting on August 22, 2002.
  - b. Staff is working on a draft of budget to present to the Administrative Committee on August 22, 2002.
  - c. He has been meeting twice a week with Mr. Nishihara, PEHF Administrator, on transition issues and is making good progress.
  - d. Ads will be placed in Sunday's paper (8/11/02) for two positions, Communication and Regulatory Specialist and Information Systems Analyst. The other three positions have interested applicants and interviews have been conducted.
  - e. Two Trust Fund staff are assisting the PEHF staff in developing an RFP for the imaging project.
  - f. He will attend a HIPAA Collaborative meeting on Friday afternoon.
  - g. Star Bulletin reporter, Rob Perez, called about a rumor that the Board had decided to delay implementation of health plans because of problems with either the hardware or software of the HFIMS system. Mr. Fukuhara responded that the Gartner Group's report indicated that the HFIMS system could meet the requirements of the Trust Fund with some configuration changes and the Trust Fund was working on costs for those changes. He learned that Mr. Perez also contacted another person who attended Trust Fund meetings on the same subject and Mr. Perez may contact trustees.

The Chair requested that all media inquiries be routed to Mr. Fukuhara. The trustees discussed how statements to the media should be handled and the impact of statements of trustees as individuals.

B. DEPUTY ATTORNEY GENERAL

Mr. Aburano reported on four items that were requested by the Board. Mr. Aburano distributed a memorandum for each of the four items, and he noted that the memoranda had been reviewed with the opinion review committee at the Department of the Attorney General but not with the Attorney General himself.

1. Whether Act 88 prevented the Trust Fund from entering into service agreements with exclusive representative employee organizations under which each organization would provide health benefits for the organization's own members. Act 88 probably does not allow the Trust Fund to enter into the proposed service agreements. While it might be argued that certain language in the Act permits such service agreements, the language of the Act and its legislative history show that the legislature intended to establish a single unified health benefits program designed and administered by the Board. Further, the Board may not have the authority or power to enter into the proposed service agreements as that authority and power were not expressly granted to it and is not necessarily implied from Act 88. In addition, entry into the proposed service agreements may constitute a breach of the trustees' duty not to delegate responsibilities that they ought to personally perform.
2. Whether the Board may contract with a third party administrator (TPA) to administer insured health and other benefit plans. As Act 88 is ambiguous and contains broad and indefinite terms as to this matter, the Board should be granted deference in determining whether it has the authority to contract with a TPA to administer insured health and other health benefit plans. In this respect, it was noted that Section 87A-20 implies that the Board has authority to procure a TPA "for any benefits plan", and that Act 88 contained evidence of the legislature's intent that the Board have flexibility and authority to construct a cost effective administration of its health benefit program. The trustees still need to comply with their fiduciary duties in deciding to use a TPA, selecting a TPA, and monitoring the TPA's performance. In addition, it appears that Act 90 (privatization and managed competition) applies to the Board's decision to use a TPA.
3. What uses can the Trust Fund make of rate credits or reimbursements that it receives from insurance carriers? The Trust Fund can use rate credits or reimbursements to help stabilize health and other benefit plan rates. With the Governor's and legislature's approval, the Trust Fund may use rate credits or reimbursements for administrative and other purposes necessary to effectuate the purposes of the Trust Fund. There is no express provision in Act 88 that calls for rate credits or reimbursements to be returned to the public employers.

4. Whether Act 88 meant that retirees could no longer have 100% coverage by Medicare and HMSA. Currently, the Public Employees Health Fund uses a "coordination of benefits" method under which a retiree receives "100%" reimbursement for covered medical expenses through Medicare and HMSA's Medicare supplemental plan, i.e., Medicare pays its reimbursement first and HMSA pays the remainder. However, under the "carve-out" method, a retiree would just be reimbursed the same amount that it would have had there been no Medicare, i.e., Medicare would still pay its reimbursement first but the Medicare supplemental plan would pay the remainder only up to the amount that it would have paid in the absence of any Medicare reimbursement. Act 88's language is ambiguous and does not necessarily require that the Trust Fund's Medicare supplemental plans use the "carve-out" method. However, from a legal point of view, the Board should consider interpreting Section 87A-23 to require use of the "carve-out" method. This interpretation would appear to be supported by the language used in the statute and the legislature's overall intention to control the rising costs of providing health benefits to retirees.

#### PUBLIC COMMENT

Ms. R. Kim provided examples of a carve-out process.

Before waiving the attorney-client privilege as to the four memoranda from the Deputy Attorney General, the Chair suggested that the trustees review the memoranda for discussion at the next Board meeting. Any comments that other persons may wish to make on the issues discussed by the Deputy Attorney General today are to be submitted to the Board in writing at or prior to the next meeting. Trustee Uwayne returned the four memoranda as he did not wish to review them until the Board voted that the documents would be available to the public.

C. BENEFITS CONSULTANT: No report.

V. UNFINISHED BUSINESS: None.

#### VI. NEW BUSINESS

##### A. Mileage Reimbursement

This agenda item was deferred to the next Board meeting.

#### VII. COMMUNICATIONS FROM THE PUBLIC AND INPUT FROM ATTENDEES

Included in the Board packet was:

- Office of the Auditor letter advising of the status of its VEBA study.
- Trustee's personal copy of Governor's Report newsletter.



VIII. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

- Board meetings are scheduled for:
  - Tuesday, August 20, 2002, at 1:30 p.m., in the State Office Tower Conference Room 405, following the Benefits Committee meeting. All trustees are encouraged to attend the Benefits Committee meeting at 9 a.m.
  - Monday, August 26, 2002, 9 a.m., Leiopapa A Kamehameha Building, Conference Room 405.
- Benefits Committee meetings are scheduled for:
  - August 6, 2002, immediately after the Board meeting.
  - Monday, August 12, 2002.
- Administrative Committee meeting is Thursday, August 8, 2002, 9 a.m.
- Rules Committee meeting is postponed to August 19, 2002, 9 a.m.

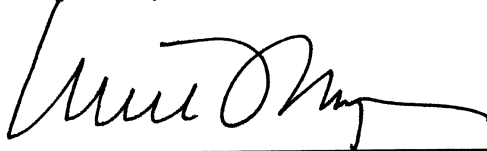
Trustee Uwaine requested that the Rules Committee add an agenda item on eligibility for reciprocal beneficiaries and domestic partners.

IX. ADJOURNMENT

MOTION was made to adjourn the regular meeting. (Yogi/Machida) The motion was passed unanimously. (Employer trustees-5/Employee-Beneficiary trustees-4)

The meeting was adjourned at 2:05 p.m.

Respectfully submitted,



Willard P. Miyake, Secretary-Treasurer *pro tem*

APPROVED as amended on October 8, 2002.

Documents Distributed:

1. Minutes of July 9, 2002. (6 pages)
2. Benefits Committee Report Back. (20 pages)
3. Letter from the Office of the Auditor dated July 26, 2002 regarding initial planning phase of study on VEBA. (1 page)
4. Approved Minutes, June 25, 2002. (3 pages)

